IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 30 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANSUKHBHAI PABHUDAS PAREKH

Versus

MANSUKHBHAI LABHUBHAI

Appearance:

MR MB PARIKH for Petitioners

MR MK VAKHARIA for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 18/06/2004

ORAL JUDGEMENT

1. Rule. Service of rule is waived by learned Advocate Mr. Mehul K.Vakharia for respondents. With the consent of the parties, the matter is heard finally.

2. This is a Revision Application filed by judgment debtor against an order passed by learned Civil Judge (JD), Bagasara, Vadia at Bagasara, in Regular Execution Application No.1 of 2000 below an Application Exh.20, filed by present petitioners i.e. original judgment debtors styled as review application of an order passed by learned Civil Judge for issuance of warrant under Order 21 Rule 35 of the Civil Procedure Code. The said application Exh. 20 came to be rejected by learned Civil Judge vide his order dated 6th of January, 2003 stating that having regard to the facts and law, the application for review was not maintainable because firstly the application which preferred by the judgment debtor at Exh. 20 was not falling within the scope of Order 47 and further that the judgment debtors preferred Application Exh. 19 for stay of an order passed by learned Civil Judge (JD) for issuance of warrant and said application came to be rejected.

3. Facts in brief denotes that the present opponents filed Regular Civil Suit No.87 of 1975 against the present petitioners, and by an agreement, a compromise came to be recorded on 31st March 1977 in the said suit and decree was drawn in terms of that compromise. Thereafter, on 4.1.2000, an application for executing the said decree was filed by the present opponents. Present petitioners appeared before the Executing Court but, however, they failed to appear on 23.4.2001. Even their advocate could not appear in said execution and, hence, on that day under Order 21 Rule 35 of the Civil Procedure Code, a warrant came to be issued by learned Civil Judge (JD). As aforesaid, vide Exh. 19, an application by the present petitioners came to be filed to stay the said order, which came to be rejected, and thereafter, an application at Exh. 20 styled as review application of the said order passed on 23rd of April 2001 came to be filed by the petitioners - judgment debtors. For the aforesaid reason, the said Application Exh.20 was rejected and hence this Revision.

4. Learned Advocate Mr.M.B.Parikh for the petitioners and learned Advocate Mr. Mehul Vakharia for the opponents were heard at length. In short, Mr. Parikh for the petitioners stated that the execution was ex facie time barred and according to the compromise decree, some promises were to be fulfilled by defendants as well as plaintiffs. Only because for certain dates, neither petitioners nor their advocate remained present, warrant came to be issued by learned Civil Judge (JD) under Order 21 Rule 35 of the Civil Procedure code. He

agreed that though in terms the application is styled as review application, in fact these are objections raised against the execution, which were required to be considered by the learned Civil Judge in its real perspective, instead the learned Civil Judge (JD) rejected the application.

5. While learned Advocate for the opponents relying on a decision of the High Court of Bombay in the matter of SHRIPATI LAXMAN vs. BALWANTRAO, as reported in AIR 1924 Bom. 344 contended that this Revision Application is not maintainable because the revisional powers for the discretion used by the Executing Court in rejecting the review application may be not exercised and discretion used may not be interfered. It was also argued that the review application as has been preferred by the petitioners was clearly not maintainable and, therefore, rightly rejected by the Executing Court. It was also contended that Exh. 19 is for approaching higher forum and order was sought to be stayed by the petitioners for issuance of warrant, and when said application was rejected, this Application Exh. 20 came to be filed by petitioners, which was rightly rejected by reasoned order by Executing Court.

6. Having regard to the rival contentions and facts and circumstances of the case, it clearly appears that the learned Civil Judge had overlooked the substantial justice. True it is that, the Application Exh. 20 came to be filed and styled as Review Application, but in substance, this is an application raising objections against the execution proceedings, which is apparent from the averments made in the said application Exh. 20 and reliefs claimed thereof. The reliefs claimed is, since the execution application is time barred, the same is required to be dismissed. Therefore, instead of going after the nomenclature, the learned Executing Court ought to have considered substance of the application, and instead of review application, this could have been considered as objections to the execution application. Whether those objections are maintainable or not, would be altogether a different matter to be decided by the learned Civil Judge (JD), but simple rejection of the application on the ground that the application was for the review and beyond the scope of Order 47 and, therefore, liable to be rejected, appears to be clearly erroneous. All judicial orders and pronouncements must be advancing the cause of substantial justice. Procedure or the formality or the nomenclature given either by the parties or the learned Advocates appearing must not weigh in passing judicial orders by the courts. Therefore,

only on this ground, the order in question is required to be set aside.

7. Without entering into the merits of the matter because it may come in the way of any of the parties, I cannot help expressing that when a dispute as to limitation is raised, court is required to examine the same, in these circumstances, with all alertness and alacrity instead considering this to be a review application, a simple disposal of the application filed by the petitioners without going into the substance is made by learned Civil Judge (JD).

8. As per the Civil Manual and Procedure, it becomes the duty of the office staff and registrar of the court to bring it to the notice of the learned Judge that given proceedings appears to be time barred. Though from the record of the Revision, we cannot make out that such procedure was followed or not, but when thereafter a specific dispute is raised about limitation, the same was required to be decided by the executing court in proper manner.

9. So far as the maintainability of the Revision Application is concerned, the facts, which were of the case of the Bombay High Court (Supra), were altogether different from the facts of the present case. In the said case, the application for review was based on the allegation that the applicant could bring evidence of Parvati's re-marriage. In light of the above facts, the High Court of Bombay ruled that the judge was justified in rejecting the review application and the revision was dismissed, but in this case in view of the above discussion, the present Revision Application clearly falls within the narrow scope of Section 115 of the Civil Procedure Code. As said above, it was the duty of the Executing court jurisdictionally to examine the issue of limitation, and instead, the learned Executing Court produced simple disposal considering the application to be of review application. It can be said that the executing court acted in the exercise of its jurisdiction illegally or with material irregularity.

10. In this view of the matter, this Revision Application is allowed. The order impugned of the learned Executing Court, which is of dated 6th of January, 2003 below Exh. 20 is set aside. It is further directed that the Application Exh. 20 be considered to be the objections to the Execution Application and to be disposed of as such according to law and as expeditiously as possible. Rule is made absolute to that extent.

(J.R. Vora, J.)

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